HONOURABLE SRI JUSTICE S. ANANDA REDDY

W.P. NO. 17065 of 2007

DATED: 11-09-2007

Between:-

Mohd. Waheeduddin.

…PETITIONER

And

The Chief Executive Officer, A.P. State Wakf Board, Nampally, Hyderabad and another.

..RESPONDENTS

HONOURABLE SRI JUSTICE S. ANANDA REDDY

W.P. NO. 17065 of 2007

O R D E R

This writ petition is filed by the petitioner aggrieved by the action of the respondents in passing the impugned proceedings dated 18-07-2007 under which not only an Enquiry Officer was appointed to enquire into the allegations made against the petitioner for conducting enquiry under Section 71 of the Wakf Act (for short 'the Act') but also the petitioner was put under suspension invoking of the provisions under Section 64(5) of the Act.

Though the petitioner in the writ petition attacks the entire proceedings as it is, but has already this Court directed to conduct necessary enquiry based on the complaint. Therefore, the learned counsel for the petitioner fairly concedes that let the enquiry under Section 71 of the Act may go on. But, however, as far as the suspension during the pendency of the said enquiry is concerned, this was not contemplated under the scheme of the Act. It is the contention of the learned counsel that, while conducting an enquiry under Section 71 of the Act, the provisions of Section 64 have no application, especially during the pendency of the enquiry. After

conclusion of the enquiry, if the petitioner is found to be guilty it may be a different think for taking appropriate action as is contemplated under any of the provisions of law including Section 64 of the Act.

In fact, this Court while admitting the writ petition passed an order holding that the provisions of Section 64 of the Act suspending the suspension observed that *prima facie* while conducting enquiry under Section 71 of the Act, the provisions of Section 64 would not apply and, therefore, the suspension by invoking the provisions of sub-section (5) of Section 64 of the Act is not sustainable.

Though the matter was heard at length, the learned counsel for the respondents was not able to place a decision showing that, while conducting enquiry under Section 71 of the Act action could be taken under the provisions of Section 64 of the Act. In fact, the perusal of the provisions of Section 64 of the Act shows that in order to impose punishment on any of the provisions specified under Section 64(1), an enquiry is contemplated under Section 64(3) and during the pendency of that enquiry in appropriate cases, the Wakf Board may, if it is of the opinion that it is necessary so to do in the interest of wakf, by an order suspend the Muthawalli until the conclusion of the inquiry. But the enquiry now sought to be conducted is as contemplated under Section 71 of the Act and there is no provision under Section 71 of the Act providing for suspension of the person against whom the enquiry is sought to be conducted. In addition, there was no reference even under Section 71 of the Act while conducting enquiry to invoke the

powers under Section 64 of the Act so as to resort to suspension against the person against whom the enquiry is sought to be proceeded. In view of that, *prima facie* this Court is of the opinion that the provisions of Section 64(5) could not be invoked to keep the petitioner under suspension during the pendency of the enquiry ordered under Section 71 of the Act.

Therefore, the impugned order to the extent of suspension is set aside and at the same time the enquiry officer, appointed by the Wakf Board, shall continue and complete the enquiry expeditiously preferably within a period of three months from the date of receipt of a copy of this order.

The writ petition is, accordingly, disposed of. No costs.

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S. ANANDA REDDY, J

Dated: 11-09-2007
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